

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHRISTOPHER WOOD,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

2:11-cv-01667-GMN-GWF

ORDER

The petitioner has presented the Court with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and has paid the filing fee (ECF No. 3).

It appears to the Court that the petition may have been filed after the expiration of the one year statute of limitation imposed under the AEDPA. 28 U.S.C. § 2244(d)(1). The one-year period begins on the date that the judgment of conviction under attack “become final by the conclusion of direct review of the expiration of the time for seeking such review.” *Id.* Thus, the one year period begins upon completion of the direct appeal or ninety days thereafter, when the time for seeking review by the United States Supreme Court expires. In this instance, petitioner did not file a direct appeal. Petition, item 2. Thus, the one-year period commenced on August 30, 2009, thirty days after his judgment of conviction was entered on July 29, 2009, as allowed under Nevada law. *Id.* The one-year period was stayed once

1 petitioner filed his state post conviction petition on July 22, 2010. By that time, petitioner had used up  
2 327 days of his 365, leaving him with thirty-eight days to bring his federal petition under 28 U.S.C. §  
3 2254.

4 By February 15, 2011, the Nevada Supreme Court had decided the appeal of his post-  
5 conviction petition. Petition, Item 4. At that point he had until March 25, 2011, to file his federal  
6 petition. However, petitioner did not file his federal petition until October 5, 2011. Thus, his petition  
7 appears to be untimely. In these circumstances, the Court must dismiss the petition unless petitioner can  
8 demonstrate good cause for his delay which would entitled him to equitable tolling of the limitations  
9 period. See, *Tillema v. Long*, 253 F.3d 494 (9th Cir. 2001) (quoting *Miles v. Prunty*, 187 F.3d 1104,  
10 1107 (9th Cir. 1999) “[w]hen external forces, rather than a petitioner’s lack of diligence, account for the  
11 failure to file a timely claim, equitable tolling of the statute may be appropriate.” )

12 Equitable tolling is only appropriate “if *extraordinary* circumstances beyond a prisoner’s  
13 control make it impossible to file a petition on time.” *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir.  
14 2002) (quoting *Calderon v. United States Dist. Court (Beeler)*, 1289 F.3d 1283, 1288 (9th Cir. 1997),  
15 *overruled in part on other grounds by Calderon v. United States Dist. Court (Kelly)*, 163 F.3d 530 (9th  
16 Cir. 1998)(*en banc*))(emphasis in original). “Indeed, ‘the threshold necessary to trigger equitable tolling  
17 [under AEDPA] is very high, lest the exceptions swallow the rule.’” *Miranda*, 292 F.3d at 1066 (*quoting*  
18 *United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir.), *cert. denied*, 531 U.S. 878 (2000)).

19 Petitioner shall be given thirty days to present argument showing that he is eligible for  
20 equitable tolling of the statute of limitations or that the Court has erred in its calculations.

21 **IT IS THEREFORE ORDERED** that the habeas corpus petition submitted in this case  
22 (ECF No. 1), shall be **FILED** and docketed by the Clerk.

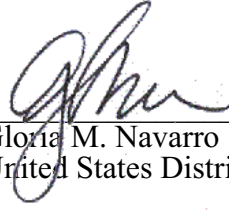
23 **IT IS FURTHER ORDERED** that the Clerk shall **electronically** serve the petition for  
24 writ of habeas corpus on the respondents. Respondents shall not answer or otherwise respond to the  
25 petition until further order of the Court.

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1                   **IT IS FURTHER ORDERED** that petitioner shall have thirty (30) days in which to file  
2 argument demonstrating that the petition is timely filed or that petitioner is entitled to equitable tolling  
3 of the statute of limitations. Thereafter, respondents shall have fifteen (15) days to respond to  
4 petitioner's arguments.

5                   Dated this 2nd day of December, 2011.

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Gloria M. Navarro  
United States District Judge